

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-47

In the Matter of

Amendment of Section 73.202(b). RM-8188
Table of Allotments,
FM Broadcast Stations.
(Latta, Marion, and Camden, South
Carolina)

NOTICE OF PROPOSED RULE MAKING

Adopted: February 25, 1993; Released: March 23, 1993

Comment Date: May 13, 1993
Reply Comment Date: May 28, 1993

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Winfas of Belhaven, Inc. ("petitioner"), requesting the substitution of Channel 232C3 for Channel 232A at Marion, South Carolina, the reallocation of Channel 232C3 from Marion to Latta, South Carolina, as the community's first local aural transmission service, and the modification of Station WWPB's license to specify Latta as its community of license. To accommodate the Latta allotment, petitioner also requests that Channel 274A be substituted for Channel 232A at Camden, South Carolina, and that the license of Station WPUB-FM be modified to specify the alternate Class A channel.

2. Petitioner states that Latta is an incorporated community with a 1990 U.S. Census population of 1,565 persons. It has a mayor and town council, as well as numerous businesses, financial institutions, churches and civic organizations such as a Lions Club and Rotary Club. In addition, Latta has its own police and volunteer fire departments. Marion (population 7,658 persons), will not be deprived of local aural transmission service because FM Station WKSX, Channel 264C3, and AM Station WKXS, will remain licensed to the community.

3. We believe the public interest would be served by proposing the substitution of Channel 232C3 for Channel 232A at Marion, and its reallocation to Latta, since it could provide the community with its first local aural transmission service and enable Station WWPB to expand its coverage area. We will not issue an *Order to Show Cause* since Kershaw Radio Corporation, licensee of Station WPUB-FM, Camden, has agreed to the change in channel. Petitioner will be required to reimburse Kershaw Radio Corporation for the reasonable costs associated with the change of frequency.

4. Channel 232C3 can be allotted to Latta in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.7 kilometers (6.6 miles) northwest to avoid a short-spacing to unoccupied but applied-for Channel 231A, Kingstree, South Carolina, and Station WZKB, Channel 232A, Wallace, North Carolina. Channel 274A can be allotted to Camden in compliance with the Commission's minimum distance separation requirements at Station WPUB-FM's licensed transmitter site, which is 7.8 kilometers (4.8 miles) southwest of Camden.¹

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Camden,		
South Carolina	232A	274A
Latta, South Carolina	--	232C3
Marion,		
South Carolina	232A, 263C3	263C3

5. IT IS ORDERED, That the Commission SHALL SEND a copy of this *Notice of Proposed Rule Making*, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to the licensee of Station WPUB-FM, Camden, South Carolina, as follows: Kershaw Radio Corporation, P.O. Box 753, Camden, South Carolina 29020.

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **May 13, 1993**, and reply comments on or before **May 28, 1993**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Gary S. Smithwick, Esq.
Smithwick & Belendiuk, P.C.
1990 M Street, N.W., Suite 510
Washington, D.C. 20036
(Counsel to petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the*

¹ The coordinates for Channel 232C3 at Latta are North Latitude 34-25-33 and West Longitude 79-29-57. The coordinates for

Channel 274A at Camden are 34-13-31; 80-40-44.

Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in

reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.